

IP 06-0996-C H/K Dempsey v JP Morgan Chase
Judge David F. Hamilton

Signed on 7/7/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

GORDON B. DEMPSEY,)	
GORDON B. DEMPSEY, P.C.,)	
)	
Plaintiffs,)	
vs.)	NO. 1:06-cv-00996-DFH-TAB
)	
JP MORGAN CHASE BANK, N.A.,)	
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

GORDON B. DEMPSEY and)	
GORDON DEMPSEY, P.C.,)	
)	
Plaintiffs,)	
)	CASE NO. 1:06-cv-0996-DFH-TAB
v.)	
)	
JP MORGAN CHASE BANK, N.A.,)	
)	
Defendant.)	

ENTRY ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Today the court held a hearing on plaintiffs' motion for a preliminary injunction (a) to prevent the defendant bank from selling a residential property it had purchased at a sheriff's execution sale and (b) ordering that plaintiff Gordon B. Dempsey be given possession of the property. The court denied the motion for reasons explained in detail on the record. The court summarizes its reasoning here.

By way of background, plaintiff Gordon B. Dempsey owned a residential property on Kessler Avenue in Indianapolis, where he maintained an office and two residential rental units. In a separate lawsuit brought by a Mr. and Mrs. Carter involving Dempsey's breach of a contract to purchase an apartment building over time, the Marion Superior Court entered a judgment against

Dempsey, ordered the sale of that apartment complex, and eventually entered a deficiency judgment against Mr. Dempsey. The Carters then sought a prompt sheriff's sale of the Kessler Avenue property to satisfy the deficiency judgment. The sale occurred on May 18, 2005. Defendant bank had loaned money to Mr. Dempsey, secured by a mortgage on the Kessler Avenue property. The bank bid the amount of its lien. The bank apparently was the only bidder, so it acquired the property at the bid price of its lien, effectively eliminating any equity Mr. Dempsey might have had in the property and producing no apparent benefit for the Carters. The bank then sought and obtained a writ of assistance from the state court and in July 2005 took possession of the Kessler Avenue property, removing Mr. Dempsey and two tenants from possession of the property.

Mr. Dempsey has shown no likelihood of success in his effort to prevent the bank from selling the Kessler Avenue property. The record shows a facially valid sheriff's execution sale pursuant to Indiana Trial Rule 69(A), which provides that the sale is "without right of redemption." Mr. Dempsey tried to prevent the sale before it occurred, but both the Marion Superior Court and the Indiana Court of Appeals rejected those efforts. The bank therefore took title to the Kessler Avenue Property. Mr. Dempsey is continuing his efforts in other cases to set aside the sheriff's sale, though it appears that, even if he is ultimately successful in showing some flaw in the sale, his remedy would not be to set aside the sale and recover the property, but to obtain monetary relief from the Carters. Mr. Dempsey's arguments in this court essentially seek to portray the sale as a mortgage

foreclosure in which he might have some additional rights, including a right of redemption. His arguments simply miss the point. The sale in question was a sheriff's execution sale that did not provide for a right of redemption. Mr. Dempsey also has not shown any likelihood of success on any claim that might establish a right to possession of the property.

In this case, Mr. Dempsey has asserted some additional claims based on the manner in which the bank carried out the process of evicting him, his law practice, and his tenants from the Kessler Avenue property. Mr. Dempsey has not shown a likelihood of success on the merits of these claims (or even standing to assert claims based on his treatment of the tenants), and he has not shown irreparable harm that could not be compensated by money damages. Even if the court assumes some wrongdoing or overreaching in the process of eviction, Mr. Dempsey's claims about those events do not offer any viable challenge to the bank's right to remove him from possession of the property. Thus, a damages remedy would be adequate compensation for any wrongdoing that might have occurred in the process of eviction.

Finally, the court extends until August 7, 2006, Mr. Dempsey's time to respond to the bank's Rule 12(b)(6) motion and request for attorney fees for frivolous litigation under Ind. Code § 34-52-1-1, et seq. The bank may file a reply no later than August 22, 2006.

So ordered.

Date: July 7, 2006

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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